

## DETAILED ACTION

1. This office action is responsive to the amendment filed on 1/11/2010. As directed by the amendment: claim 1 has been amended and claim 2 has been cancelled. Thus, claims 1 and 3-5 are presently pending in this application.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Losier et al. (US Patent 6,357,945) in view of Bauer (US Patent 2,951,584).

4. In re Claim 1, Losier discloses a lip package (Column 1, Line 25), comprising: a container body 12/14/18 ("barrel", "barrel extension" and "applicator"; Fig. 5; Column 2, Line 65 to Column 3, Line 1) with a push button 30 ("actuator"; Fig. 5; Column 3, Line 29) protruding from an outer circumferential surface thereof (Fig. 5). A cylinder 12 ("barrel"; Fig. 5; Column 2, Line 67) is coupled to the container body (Fig. 5), for containing a liquid cosmetic (Column 3, Lines 3-5). A delivery member 18 ("applicator"; Fig. 5; Column 3, Line 1) is coupled to the cylinder (Fig. 5) and having a top surface 50 ("applicator surface"; Fig. 5; Column 3, Lines 16-21) formed with a plurality of delivery

holes ("microporous material to a porous mesh"; Column 3, Line 20). A piston 22 ("piston elevator"; Fig. 5; Column 3, Line 3) with the same shape and size as a cross section of the cylinder (Fig. 5; Column 3, Lines 3-8), the piston being raised along an inner circumferential surface of the cylinder to pressurize the liquid cosmetic (Column 3, Lines 3-8). An actuating member 40 ("rod"; Fig.'s 1-2; Column 3, Line 13) is accommodated within the container body (Fig.'s 3-4), the actuating member vertically raising the piston in response to a push operation of the push button to deliver the liquid cosmetic through the delivery member (Column 3, Lines 56-65, 9-10 and 16-21). A lid 20 ("closure"; Fig. 5; Column 3, Line 1) is detachably coupled to an outer circumferential surface of the cylinder (Fig.'s 3-5) to close the delivery member 18 (Column 3, Line 21), and the push button 30 (Fig. 5) protrudes from the outer circumferential surface of the container body (See Fig. 5).

5. Although Losier does not disclose an end of the lid fitting into a fixing recess on the push button, attention is directed to Bauer which teaches a lip package having a lid 26 (Fig. 5) and a push button 16 (Fig. 5) protruding from an outer surface of the container body 11 (Fig. 5), the push button comprising a fixing recess 31 ("groove"; Fig.'s 5 and 7; Column 2, Line 50) such that upon coupling of the lid to the outer surface of the container body, an end of the lid 30 ("rib") can be fitted into the fixing recess of the push button (Fig.'s 5 and 4; Column 2, Lines 47-52) to fix the push button, for the purpose of securely locking the cover in place and preventing it from opening accidentally (Column 2, Lines 52-53).

6. Accordingly, it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to modify the device of Losier, to include a fixing recess on the push button, capable of receiving an end of the lid, as taught by Bauer, for the purpose of securely locking the cover in place and preventing it from opening accidentally.

7. In re Claims 3 and 4, Losier further discloses the top surface 50 (Fig. 5) of the delivery member 18 (Fig. 5) is formed to be inclined with respect to a cross section of the cylinder 12 (Fig. 5; Column 1, Line 66 to Column 2, Line 1). An absorbing member, including a sponge ("microporous material to a porous mesh"; Column 3, Line 20), for covering the top surface 50 (Fig. 5) of the delivery member 18 (Fig. 5).

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Losier in view of Bauer, further in view of Wiercinski (US Patent 4,865,231).

9. In re Claim 5, in addition to the claimed features disclosed by the combination of Losier/Bauer as discussed above in regard to Claim 1, Losier further discloses the actuating member 40 (Fig.'s 1-4) comprising a nut plate 44 ("upper gear"; Fig.'s 1-4 and 6; Column 3, Lines 13-14) to be rotated in response to the push operation of the push button 30 (Fig. 5; Column 3, Lines 57-60), a screw bar 42 ("threaded screw"; Fig.'s 1-4; Column 3, Line 13), and a piston 22 coupled to the screw bar (Fig. 4).

10. Although Losier does not disclose the screw bar being threadably engaged with the nut plate such that the screw bar rises in response to the rotation of the nut plate, attention is directed to Wiercinski which teaches a cosmetic package comprising a nut

plate 30 ("threaded nut"; Fig. 2; Column 4, Line 48) actuated by a push button 32 (Fig. 1) and a screw bar 29 ("feed screw"; Fig. 2) threadly engaged with the nut plate (Column 4, Lines 46-51). The screw bar being raised in response to the rotation of the nut plate (Column 4, Lines 46-51), and a piston 27 ("elevator"; Fig. 2) coupled to the screw bar (Column 4, Lines 42-44) is raised in response to the rising of the screw bar (Column 5, Line 64 to Column 6, Line 9), for the purpose of providing a button type dispensing package (Title).

11. Accordingly, it would have been obvious to a person having ordinary skill in the art, at the time the invention was made, to modify the device of Losier, to replace the drive mechanism used therein with an equivalent drive mechanism wherein the screw bar is threadly engaged with the nut plate such that the screw bar rises in response to the rotation of the nut plate, thereby causing the piston to rise in response to the rising of the screw bar, as taught by Wiercinski, for the purpose of providing an equally effective button type dispensing package.

### ***Response to Arguments***

12. Applicant's arguments filed 1/11/2010 have been fully considered but they are not persuasive.

13. Applicant has argued that the combination of Losier and Bauer fails to teach every limitation of the newly amended Claim 1. Specifically, Applicant asserts that

Bauer fails to disclose "an end of the lid can be fitted into a fixing recess of the push button to fix the push button", as claimed. The Examiner respectfully disagrees.

14. The Examiner has cited Bauer as disclosing "an end of the lid 30 ("rib") can be fitted into a fixing recess 31 ("groove") of the push button (Fig.'s 5 and 4; Column 2, Lines 47-52) to fix the push button".

15. Applicant has argued that the engagement of the lid and push button in Bauer between the rib 30 and the groove 31, cannot "fix the push button to prevent the push button from being pushed accidentally upon coupling of the lid" (Emphasis added).

Applicant's argument is misplaced here, where the language of currently amended Claim 1 requires only that the end of the lid engage the recess of the push button "to fix the push button".

16. It is the Examiner's position that upon moving the lid and push button into position such that the rib 30 of the lid engages the groove 31 of the push button that the push button is then fixed (i.e. - the push button is in a fixed position with the lid). It is understood by the Examiner that the push button of Bauer will remain fixed with the lid of Bauer, thereby preventing the lid from accidentally opening (i.e. - absent a pressing of the push button), until such time that sufficient force is applied to the push button to disengage the lid and cause the device to open.

17. The currently amended language of Claim 1 does not require, and the Examiner has not asserted, that the engagement between the lid and the push button will serve "to prevent the push button from being pushed accidentally upon coupling of the lid". Therefore, to the extent that such a limitation is not provided in the claims, Applicant's

argument that any failure of the combination of Losier/Bauer to disclose such a limitation is irrelevant with regard to the application of the combination of Losier/Bauer to the currently amended Claim 1.

***Conclusion***

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN A. VARNUM whose telephone number is (571) 270-7853. The examiner can normally be reached on Monday - Friday, 9:00 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. A. V./  
Examiner, Art Unit 3751

/Gregory L. Huson/  
Supervisory Patent Examiner, Art  
Unit 3751